

46 Am. Jur. 2d Judges § 100

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Judges

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IX. Disqualification to Act in Particular Case

B. Grounds for Disqualification

2. Interests as Grounds for Disqualification

b. Particular Interests as Grounds for Disqualification

(2) Judge as Party or Witness

§ 100. Disqualification of judge who is witness—As potential witness

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  45, 50

A.L.R. Library

[Disqualification of judge on ground of being a witness in the case, 22 A.L.R.3d 1198](#)

Many courts hold that a trial judge is not disqualified from presiding in a trial merely because of a possibility that the judge might become a witness in the case,¹ although other courts have held to the contrary.²

In some cases, it has been found that a judge is disqualified on a trial if he or she presided at a previous proceeding in or affecting the same action and might be compelled to testify about it at a later proceeding.³ In other cases, the judge has not been disqualified where the material evidence within the judge's knowledge could be obtained from other witnesses,⁴ or from the record of a prior related proceeding over which the judge presided.⁵

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Footnotes

- 1 Rush v. Wallace, 23 Ark. App. 61, 742 S.W.2d 952 (1988); People v. Hannon, 48 Ill. 2d 462, 273 N.E.2d 9 (1971); Stokes v. State, 853 S.W.2d 227 (Tex. App. Tyler 1993); Fay v. Van Ells, 134 Vt. 536, 367 A.2d 167 (1976).
- As to the rule that the judge be a material or necessary witness in this regard, see § 101.
- 2 In re Disqualification of Corrigan, 47 Ohio St. 3d 602, 546 N.E.2d 925 (1989); State ex rel. Carroll v. Junker, 79 Wash. 2d 12, 482 P.2d 775 (1971).
- 3 People v. Dennis, 14 Ill. App. 3d 493, 302 N.E.2d 651 (1st Dist. 1973); State ex rel. Smith v. Wilcoxon, 1957 OK CR 51, 312 P.2d 187 (Okla. Crim. App. 1957).
- 4 Bresnahan v. Luby, 160 Colo. 455, 418 P.2d 171, 22 A.L.R.3d 1193 (1966).
- 5 Walls v. Spell, 722 So. 2d 566 (Miss. 1998).

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